

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 723 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ATULBHAI MATHURDAS CHATWANI

Versus

STATE OF GUJARAT

Appearance:

MR YS LAKHANI for Petitioner
MR LR POOJARI ADDL. PUBLIC PROSECUTOR
for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 16/09/98

ORAL JUDGEMENT

By this application, under Sec. 482 of the Criminal Procedure Code, the petitioner who is the accused in Inquiry Case No. 673 of 1997, prays for quashing the complaint, and the investigation, if at all being made by the Police.

2. The facts which led to the petitioner to prefer this application may, in brief, be stated. The respondent no.2 filed the complaint against the petitioner before the learned Judicial Magistrate (First Class) at Rajkot relating to the offences punishable under Secs. 406 and 420 of I.P.Code alleging that his acquaintance Aniruddhasinhji Jilubha Jadeja had entered into the agreement with the petitioner to purchase the land situated within the local limits of village Khirsara. The respondent no.2 and Aniruddhasinhji Jadeja were also carrying on their business jointly and often the petitioner was visiting them. Hence both had come closer. The respondent no.2 could mark that both Aniruddhasinhji Jadeja and the petitioner were performing their respective part of contract sincerely and that impelled the respondent no.2 to repose trust in the petitioner, and have dealings with him. The respondent no.2, therefore, on 22nd July, 1996, agreed to purchase the land admeasuring 22 Acres bearing Survey No. 519 situated within the local limits of village Kagdadi and paid Rs.2,00,000/- by way of earnest money to the petitioner. The petitioner had at that time assured that after going back to Bombay, he would be sending relevant papers and documents to the respondent no.2. Though one year had passed thereafter, the petitioner did not, as alleged in the complaint, send relevant papers and documents to the respondent no.2. In the month of November, 1997, when respondent no.2 had been to Bombay, he contacted the petitioner and inquired about the papers and documents. The petitioner, therefore, as alleged, curtly replied that he (respondent no.2) could do his worst, he would not be showing or handing over the papers & documents and would not even refund the earnest money of Rs.2,00,000/-. He was then driven out by hooting. The petitioner also satirized saying that he would never pay earnest money back; on the contrary, he would purchase other lands and gloat. The respondent no.2, during the talks, realized that shortly the petitioner would be at Rajkot. He, therefore, filed the complaint directly before the learned Judicial Magistrate (First Class) at Rajkot on 11th December, 1997 alleging that the petitioner was about to come to Rajkot, and as the petitioner had committed the offences of cheating and breach of trust, the complaint was being filed so that the same can be sent to Police under Sec.156(3) of the Criminal Procedure Code for investigation to unearth the land scandal, and appropriate action. The learned Magistrate, after perusing the complaint, ordered to send the same to Police for investigation under Sec.156(3) of the Criminal Procedure Code. Having come to know about the complaint and order passed by the learned Magistrate,

the present application has been filed for quashing the complaint and the investigation ordered invoking Sec. 482 of the Criminal Procedure Code.

3. It may be stated that today the respondent no.2 is not present, though served with Rule. The record shows that when initially notice was served, he did not appear and thereafter, when the Rule was issued and served on him, he preferred to remain away from the Court, for the reasons best known to him.

4. The learned advocate representing the petitioner contends that prima facie, no case is made out. The complaint is, therefore, required to be quashed, as there is apparent abuse of the process of the Court reflecting stratagem. He then took me to the entire complaint and submitted how, to harass the petitioner with some oblique motive best known to him (respondent no.2), the complaint was filed. In reply to the contentions advanced on behalf of the petitioner, Mr. Poojari, the learned APP submitted that ordinarily, the court does not exercise discretionary powers but in rarest of the rare cases, the powers are exercised. If Police investigation is ordered, and the same is in progress, it would not be just & proper to throttle the same, and prevent the truth from coming out to surface. When reading the complaint, it appears that the allegations made, prima facie, constitute the offence alleged, the Court should boost the investigation. The petitioner who is the wrong-doer cannot be let off by putting the cork in the investigation, let the complaint should reach to its normal end. He thus urged not to exercise discretionary powers u/s. 482 of Criminal Procedure Code in favour of the petitioner.

5. I agree with the learned APP that ordinarily, if the Police investigation is ordered, this court should not interfere, and exercising discretionary powers under Sec.482 of the Criminal Procedure Code, should not quash the same, but it appears, perusing the complaint/F.I.R. & materials on record that no criminal wrong, prima facie, appears to have been committed, to remedy civil wrong done, or with some oblique motive, the complaint is filed, and there is no justifiable reason to continue the investigation, or at last chances of conviction are bleak or no meaningful purpose is likely to be served, better it would be to exercise the powers and pass appropriate order. When moved for quashing the complaint, the Court has also to take into consideration the special feature appearing on record, in particular case, and consider whether it is expedient and in the interest of justice to

permit the prosecution to continue. because the Court cannot be utilized for any oblique motive or as a handle to harass any one.

6. On perusal of the complaint which is sent to Police, no prima facie case constituting the offence alleged, or any other offence is made out. Making too general statements, which can be termed scanty, the case is pleaded. It is in other words vague, and bewraying hanky-panky, and pointing commission of no offence. It is not stated, at what place, in which village, or town, talks for agreement in question took place, and who were present. Such facts were necessary so as to frame the charge with specific details and also to know whether the learned Judicial Magistrate (First Class) was having the jurisdiction, and whether the case alleged is bona fide. Though Anirudhdhasinhji Jadeja is referred to in the complaint, he is not cited as the witness; and though no reference about P.D.Zala and Anilbhai Pujari is made, they are cited as witnesses. The person having knowledge about alleged transaction is not cited and ignored are cited as witnesses, it is the circumstance going to show that for oblique motive or for getting solution of an irremedial issue, the complaint is filed making out a case and suppressing the truth. Further the conduct of respondent no.2 also raises suspicion. According to him, he paid Rs. 2,00,000/- by way of earnest money on 22nd July, 1996, when the alleged agreement to sell was entered into, but he has, neither taken the receipt thereof, nor taken care of getting the statement acknowledging the payment of earnest money made, recorded in the agreement to sell and kept everything at a stake. It is also pertinent to note that along with the complaint filed, a copy of the agreement if reduced into writing, is also not produced, in order to satisfy the conscious of the Court. The respondent no.2 never took care of examining any document, and waited for one year or more for necessary documents. Realising that he is cheated, he does not file the complaint in time, but waits for the arrival of petitioner in Rajkot. After coming to know that petitioner is to come to Rajkot from Bombay, he, 6 to 7 days prior to it craftily files vague complaint & prays for Police investigation so that he can make the petitioner to succumb to his ill-will or design. In view of such facts, it can be said that the allegations made in the complaint, are absurd and inherently improbable. The possibility, that the complaint is filed with some oblique motive or to buck against the impossibility, cannot be ruled out. Further on the basis of the case pleaded, though accepted as it is, there is no possibility of the case ultimately

concluding in conviction. To permit the complaint to come to its normal end in usual course would amount to have nothing but one's labour for one's pains. The learned APP is also helpless in enlightening the court about the latest development of police investigation ordered. Under the circumstances, there is no justifiable reason to permit the prosecution to continue, as abuse of process of law can well be assumed. The complaint lodged is, therefore, required to be quashed, and also the investigation ordered under Se.156(3) of the Criminal Procedure Code.

7. For the aforesaid reason, the application is allowed. The complaint filed by the respondent no.2 against the present petitioner before the learned Judicial Magistrate, First Class, at Rajkot and registered as Criminal Inquiry No. 673 of 1997 as well as the Police investigation ordered under Sec. 156(3) of the Criminal Procedure Code on 11th December, 1997 are, hereby, quashed. Rule accordingly made absolute.

Date: 16/9/1998. -----
(ccshah)